

property might be sold behind the back of the mortgagee for a very inadequate sum, and he might thus be deprived of the security for which he had already obtained a conditional decree, or driven to institute fresh legal proceedings to set aside the fraud that had been practised upon him.

We accordingly set aside the order of the Munsiff of the 5th September last, and direct that the appellant's application be heard. Appellants will have their costs in this appeal.

J. V. W. —

Appeal allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Mitter and Mr. Justice Grant.

ABDUL HAMID *v.* THE EMPRESS.*

Forgery—Penal Code, s. 464—Intention in fabricating documents—Fraudulent and dishonest fabrication. 1886 September 7.

The accused, who was a copyist in the Sub-divisional Office at *B*, applied for a clerkship then vacant in that office. An endorsement on his application, recommending him for the post and purporting to have been made by the Sub-divisional Officer of *B*, was found to have been falsely made by the accused. The application was accompanied by a letter, also fabricated by the accused, purporting to be from the Collector to the Sub-divisional Officer at *B*, informing the latter officer that he, the Collector, had selected the accused for the vacant post. The Sub-divisional Officer, having some suspicion as to the genuineness of this letter, wrote a demi-official letter to the Collector to ascertain whether he had really written it; and this being posted in the local post office the accused fabricated a third document, purporting to be a letter from the Sub-divisional Officer to the post master asking him to stop the despatch of the demi-official letter. The accused was charged with, and convicted in the Sessions Court of the offence of forgery, under s. 464 of the Penal Code, in respect of the three documents. *Held*, the conviction was right with regard to the two first documents, but with regard to the third document it could not be said that he falsely made it either dishonestly or fraudulently within the meaning of that section.

THE facts of this case are sufficiently stated in the judgment of the Court (MITTER and GRANT, JJ.)

Baboo *Umbica Churn Bose*, for the appellant.

The Deputy Legal Remembrancer (Mr. *Kilby*), for the Crown.

* Criminal Appeal No. 491 of 1886, against the sentence passed by J. B. Worgan, Esq., Sessions Judge of Cuttack, dated the 28th of June 1886.

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The learned vakeel for the appellant has not contested the finding of the Sessions Judge, but has contended that upon that finding the Sessions Judge ought not to have held that the appellant made a false document within the meaning of s. 464 of the Indian Penal Code in respect of documents X, C, and K, which formed the subject of the charges framed against the appellant. The facts of the case are these: The third clerkship in the Sub-divisional Office at Budruck having fallen vacant, an application, purporting to have been made by the appellant who was a copyist in that office, reached the Collector of Balasore applying for the post. At the foot of this application there was an endorsement, purporting to have been made by the Sub-divisional Officer of Budruck, recommending the applicant for the post. The document marked X is the endorsement in question, and it has been found to have been falsely made by the appellant. The document marked C purports to be a letter from the Collector of Balasore to the Sub-divisional Officer at Budruck, informing the latter officer that he, the Collector, had selected the appellant for the vacant post. This is also found to have been fabricated by the appellant. A suspicion having arisen in the mind of the Sub-divisional Officer of Budruck as to the genuineness of this document, he wrote a demi-official letter to the Collector of Balasore to ascertain whether the document marked C was genuine. This letter was posted in the local post office. The appellant having got an inkling of this fact fabricated a letter purporting to be written by the Sub-divisional Officer to the address of the postmaster, asking him to stop the despatch of his demi-official letter. This document is marked K, and it has been also found that it was fabricated by the appellant. The appellant has been found guilty of forgery in respect of all these three documents, and has been sentenced by the Sessions Judge to three years rigorous imprisonment, that is to say, rigorous imprisonment for one year in respect of the forgery of each of these three documents. It has been found, and it is clear, that the object of the appellant in fabricating two of these documents was to obtain the vacant clerkship by deceiving the Sub-divisional Officer of Budruck and the Collector of Balasore. Upon these facts it was con-

tended before us that, under s. 464 of the Indian Penal Code, the appellant could not be held to have made a false document in any one of the three instances mentioned above. The contention of the learned vakeel is that, although he fabricated these documents, still it cannot be said that he fabricated them either dishonestly or fraudulently within the meaning of the definitions of these two words given in ss. 24 and 25 of the Indian Penal Code.

We are of opinion that this contention is not sound as regards the documents X and C. Whether or not, under the circumstances mentioned above, the appellant may be said to have fabricated these two documents "dishonestly," it is clear to us that he fabricated them fraudulently within the meaning of the definition of that word given in the Indian Penal Code. As already remarked, his object was to obtain the vacant post in the Sub-divisional Office at Budruck. His intention, therefore, in making these two false documents was to obtain some pecuniary advantage by deceiving the Sub-divisional Officer as well as the Collector. In fabricating X his intention was to deceive the Collector of Balasore; in fabricating C his intention was to deceive the Sub-divisional Officer of Budruck. He, therefore, made these two documents falsely with a view to deceive the Collector of Balasore and the Sub-divisional Officer of Budruck respectively, and with the intention of gaining a pecuniary advantage by securing his appointment to the post which was vacant in the Sub-divisional Office of Budruck. That being so, we think that he made these documents fraudulently within the meaning of s. 25 of the Indian Penal Code. But, as regards K, we are of opinion that the contention of the learned vakeel is correct. The intention with which the appellant made this false document was evidently to screen himself from detection of the fraud which he had already committed by fabricating the documents X and C. That being the intention with which K was fabricated, it cannot be said that he made that document falsely either "dishonestly" or "fraudulently." His intention was not to cause any wrongful loss to another or wrongful gain to himself, or to derive some pecuniary advantage to himself. The conviction, therefore, as regards K must be set aside, but

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the convictions as regards X and C will stand. Having regard to the gravity of the offence committed by the appellant we are of opinion that no lighter sentence than the one awarded by the Sessions Judge would meet the ends of justice. We, therefore, sentence the appellant to two years rigorous imprisonment in respect of the forgery of X, and leave the sentence as regards C unaltered.

The result is that the cumulative sentence of three years rigorous imprisonment awarded by the Sessions Judge will stand.

J. V. W.

FULL BENCH.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice Wilson, Mr. Justice O'Kinealy, and Mr. Justice Macpherson.

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SURENDER NATH PAL CHOWDHRY AND OTHERS (DEFENDANTS) v.
BROJO NATH PAL CHOWDHRY AND ANOTHER (PLAINTIFFS.) *

Res-judicata—Admissibility in evidence of decree in former case.

The plaintiffs, as purchasers of a share of an estate, sued to recover their share of the rent of certain tenures held in that estate by the defendants. The defendants denied being in possession as alleged. Another co-sharer in the same estate had previously brought a suit against the same defendants for the rent of the same tenures, and in that suit the present plaintiffs and other co-sharers of the estate were made co-defendants, and the decision in that suit was that the present defendants were in possession and were liable to pay to the then plaintiff his share of the rent.

Held, (MITTER, J., dissenting) that the decree in the former suit was not a *res judicata* or even admissible as evidence in the present suit.

THIS case was referred to a Full Bench by McDONELL and GHOSE, JJ., on the 21st April 1886, with the following opinion:—

The plaintiffs, who are the proprietors of 1 anna 8 gundas share of a certain estate, Turf Ranaghat, sued to recover from the defendants Surender Nath Pal Chowdhry and others, their share of the rent said to be due on account of certain tenures

* Full Bench Reference in Appeals from Appellate Decrees No. 1740 and 1741 of 1885, from the decrees of J. Crawford, Esq., Officiating Judge of Zilla Nuddea, dated the 13th May 1885, reversing the decrees of Baboo Jogendra Nath Mitter, Munsiff of Ranaghat, dated 25th October 1884.